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| EXAMINER |
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/660,694
Filing Date: September 12, 2003
Appellant(s): HOCHTRITT ET AL.

MAILED
MAR 02 2007
GROUP 1700

Andrew J. Patch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 30, 2006 appealing from the Office action mailed August 30, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|------------------|--------|
| 5,516,000 | FREIBURGER et al | 5-1996 |
| 6,699,360 | HEATH et al | 3-2004 |

European patent document 320,382, (February 1989)

European patent document 286,538, (October 1988)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either the European patent document 320,382, European patent document 286,538, Freiburger et al each in view of Heath et al. The primary references each disclose a stack of interfolded absorbent sheet products, namely sheet of tissues, comprising a plurality of interleaved absorbent tissues each of which is folded twice about axes that are perpendicular to one another; see Figure 1 and column 8, lines 25-57 of EP 0286538, Figures 2-4 and page 3, lines 51-58 of EP 0302382, and Figure 7, column 1, lines 5-19 and claim 1 of Freiburger et al. The secondary reference discloses a single ply, absorbent sheet product in the form of bathroom tissue, facial tissue or napkins which may be embossed and has a basis weight of 12.5; see the Abstract. The reference goes on to say that its tissue is an improvement over typical one-ply facial tissue and napkins which suffer from the problem of thinness and therefore imprintability and lack of softness. It would have been obvious to one of ordinary skill in the art to use the tissue product of the secondary reference as the tissue products in the primary references in order to provide an economical product with enhanced softness.

With regards to claims 8-13, the primary references are not limited to a particular fold structure. See for example page 3, lines 51-58 of EP 302,382 which suggest increasing the number of panels, i.e. the number of folds, and types of folds. Therefore, it would have been obvious to one of ordinary skill in the art to vary the size of the

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panels and the amount of folds in the sheets to provide the desired size of the absorbent product for a particular end use, an increased amount of folds allowing for a larger individual tissue to be dispensed and an increased strength during dispensing. Claims 14 and 15 are directed to process limitations that do not add any patentably distinguishing features to the final product.

As to claims 18 and 20, the references disclose the sheets in dispensers with an opening. The phrase "downwardly-directed" (claim 18) is a relative term, depending on how one views the dispenser, and therefore does not distinguish over the prior art articles. In claim 20, the phrase "oriented at an dispenser" does not further define the claimed article since the support surface is not being claimed in combination with the dispenser and may be positioned at any angle.

(10) Response to Argument

Appellants acknowledge that the primary references teach a quarter-folded interleaved stack of tissues but because the tissues are facial tissues there are they are in different art than the instantly claimed product. First, is noted that the instant claims are broadly directed to "a stack of interfolded absorbent sheet products" which would clearly include tissues and facial tissues. Second, the primary references are not restricted to facial tissues as appellant implies. EP 302382 is directed to any sheet material and is more applicable to facial tissues (page 2, lines 46-47), EP 286,538 is directed to interfolded absorbent sheets (claim 1) and Freiburger et al is directed to tissue that may have uses from nose-blowing to hand wiping (column 1, lines 4-6). And third, the secondary reference Heath et al suggest a structural equivalence or at least

an art equivalence of bathroom tissue, facial tissue and napkins; see for example column 2, lines 27-30, column 3, lines 63-65 and column 6, lines 58-59.

Appellant further argues that the combination of references is a result of hindsight because the secondary reference is "primarily" directed to bathroom tissue and a bulky tissue that would not function properly as an interleaved folded product. The secondary reference discloses a single-ply absorbent product that may be used as a *facial tissue*, as well as bathroom tissue and a napkin. Appellant admits that the primary references are directed to facial tissues; see the first paragraph in Argument section (vii) of Appeal Brief. Therefore, the primary references and the secondary references are directed to the same art. The suggestion to combine the references is in the secondary reference where it is taught that their facial tissue is produced at a low cost as compared to traditional multi-ply absorbent paper, has high strength so that it holds up in use, can be printed, and has higher softness; see column 1, lines 44-53, column 3, lines 63-65, column 4, lines 48-53, and column 6, line 58 through column 7, line 2. It would have been obvious to one of ordinary skill in the art to use the one-ply facial tissue material of the secondary reference as the facial tissue material in the primary reference in order to provide a product that is lower in cost than a multi-ply product and yet can be printed and has the properties of being soft yet strong. Regarding the bulkiness of the product in the secondary reference, there is no evidence of record to support the position that the single-ply product of the secondary reference is too bulky to be folded and dispensed from an interleaved stack of sheets.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alexander Thomas/

Primary Examiner 1772

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